



IT IS ORDERED as set forth below:

Date: February 26, 2010

James E. Massey

James E. Massey
U.S. Bankruptcy Court Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:

CASE NO. 08-84618

Harry Jocelyn Gelibert,

CHAPTER 13

Debtor.

JUDGE MASSEY

Harry Jocelyn Gelibert,

Movant,

v.

CONTESTED MATTER

United States of America, ex rel The Internal
Revenue Service ,

Respondent.

ORDER DENYING OBJECTION TO CLAIM

On May 4, 2009, Debtor objected to the proof of claim filed by the Internal Revenue Service in the total amount of \$60,367.57, stating as follows:

Specifically, Debtor objects to the secured status of the claim due to the lack of equity to secure the lien on the property. In addition, the property is being surrendered in Debtor's

Chapter 13 Plan. Therefore, the claim should be disallowed until amended to reflect the unsecured deficiency balance.

A hearing was scheduled on the objection for May 20, 2009. The IRS did not appear at the hearing. It was not until February 2010, however, that Debtor's counsel submitted an order on the objection.

The objection fails to state a claim for relief because the factual allegations satisfy none of the bases on which the Court could disallow the claim under section 502(b) of the Bankruptcy Code. Further, contrary to the implication of the objection, the claim was not filed solely as secured. The proof of claim asserted a total claim of \$60,367.57, but the amount asserted to be secured was only \$16,508.50.

The objection was, without saying so, an assertion that the Respondent does not hold a secured claim within the meaning of section 506(a)(1) of the Bankruptcy Code. To the extent Debtor is asserting that the claim would cease to be secured because "the property is being surrendered" in the Chapter 13 plan, he is mistaken.

Surrender of collateral for a debt pursuant to a confirmed Chapter 13 plan does not constitute an abandonment of the property so as to eliminate the bankruptcy estate's interest in the property (and thereby render the claim unsecured under section 506(a)(1)).

The Code, pursuant to 11 U.S.C. § 101, does not define the parameters of the term surrender. The term "surrender," in the context of a Chapter 13 plan, means the relinquishment of any rights a debtor has in the collateral. The Bankruptcy Code provides a Chapter 13 debtor the option to surrender property to a secured creditor. 11 U.S.C. § 1325(a)(5)(C).

In re Cornejo, 342 B.R. 834, 836 (Bankr. M.D.Fla. 2005) (footnote omitted). The relinquishment of the debtor's rights does not transfer title to the creditor or relinquish the estate's interest in the

property; it merely bars the debtor from maintaining possession of the collateral and from contesting the right of the creditor to foreclose on the property.

For these reasons and because Debtor failed to timely submit an order on the objection, see BLR 9013-2(a), the objection is DENIED without prejudice.

END OF ORDER